

REMARKS

By this amendment, claims 1-26 are pending, in which claims 1, 7-9, 14, 22, and 23 are currently amended, and claim 26 is newly added. No new matter is introduced.

The Office Action mailed October 2, 2003 rejected claims 1-3, 5, 7, 9-12, 14, and 22-25 under 35 U.S.C. § 102 as anticipated by *Pogrebinsky* (US 6,445,681), claims 4, 8, 13, 15, and 21 as obvious under 35 U.S.C. § 103 based on *Pogrebinsky* in view of *Casey* (US 6,493,349), and claims 6 and 16-18 as obvious under 35 U.S.C. § 103 based on *Pogrebinsky*. Further, claims 7 and 8 were objected to for informalities.

Claims 19 and 20 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Applicants have amended claims 7 and 8 to correct informalities according to the Examiner's helpful suggestion.

To advance prosecution, the Applicants have also amended claims 1, 9, 14, 22, and 23. Independent claim 1, as amended, recites "a routing engine forwarding a packet to a destination node of a communications network, wherein **the packet traverses a particular connectionless communication path among a plurality of connectionless communication paths** to the destination node; and a probe mechanism generating and **sending a probe message over the particular connectionless communication path traversed by the packet for determination of statistics of the communications network with respect to the data packet.**" Amended claim 9 recites "generating a probe message to **determine performance statistics relating to transmission of a packet over a connectionless communication path**; and sending said probe message **over the connectionless communication path** among a plurality of connectionless communication paths to a destination node that is reachable by any one of the plurality of connectionless communication paths." Claim 14 now recites "a probe poller processor receiving

performance statistics information relating to transmission of a packet, the performance statistics information being collected by a probing router that generates and **sends a probe message over a connectionless communication path that transports the packet** to a destination node that is reachable by any one of the plurality of connectionless communication paths.” Amended claim 22 recites “means for generating and sending a **probe message over one of the plurality of connectionless communication paths** to the destination router to **determine delay experienced by the data packets, the one connectionless communication path transporting the data packets.**” Independent claim 23 recites “generating a **probe message for determining propagation time associated with transmission of a data packet** to a predetermined location; and **sending said probe message over a connectionless communication path that transports the data packet** among a plurality of connectionless communication paths of a network.”

The above claim features stem, in part, from Applicants’ recognition that conventional approaches to collection of network statistics have not fully accounted for the actual communication path that packets follow in a connectionless environment (Specification, paragraphs [8] and [9]).

By contrast, *Pogrebinsky* discloses a method for measuring delay parameters between node A and node B by computing relative one way delays from node A to node B and vice versa (Abstract). In support of its rejection of claims 1, 9, 22, and 23, the Office Action, on page 3, equates the “packet” in the forwarding step as the probe packet P1 (FIG. 6). Although the Office Action does not explain what would then constitute the claimed “probe message,” it is presumed that the claimed “probe message” is P3. There is no disclosure in *Pogrebinsky* that P3 is traversing the communication path to reach node B as P1. To better appreciate this important distinction, the operation of the *Pogrebinsky* is examined.

Pogrebinsky, on col. 6: 58 – col. 4: 5, describes that a probe packet (P1) is sent from Node A at time T_{A1} to Node B, where it is received at time T_{B1} . At a slightly later time than time T_{B1} , a packet (P2) including the time T_{B1} , is sent from Node B, and arrives at Node A at some time later than T_{A1} . A third packet, preferably a probe packet (P3), is sent from node A at time T_{A2} to Node B, where it is received at time T_{B2} . At a slightly later time than time T_{B2} , a packet (P4), preferably a probe packet, including the time T_{B2} , is sent from Node B, and arrives at Node A at a time intermediate times T_{A2} and T_{A3} . A fifth packet, preferably a probe packet (P5), is sent from node A at time T_{A3} to Node B, where is received at time T_{B3} . At a slightly later time than time T_{B3} , a pocket (P6), preferably a probe packet, including the time T_{B3} , is sent from Node B, and arrives at Node A at time later than T_{A3} .

These time values are then used to compute relative one way delay (ROWD) for each of the probe packets, P1, P2, and P3: ROWD1, ROWD2, and ROWD3. As enumerated in col. 4: 25-27, the values for ROWD1, ROWD2, and ROWD3 are different. This thus suggests that different paths have been taken for each of the probe packets, P1, P2, and P3 because clock differences have been removed from the computation of ROWD1, ROWD2, and ROWD3. Accordingly, the claim feature of “sending a probe message over **the particular connectionless communication path** traversed by the packet” cannot be satisfied.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference, based on the foregoing, it is clear that *Pogrebinsky* fails to anticipate amended independent claims 1, 9, 14, 22, and 23. Therefore, Applicants urge withdrawal of the 35 U.S.C. § 102 rejection.

The secondary reference of *Casey*, which is applied for a supposed teaching of virtual private network architectures (Office Action, page 5, item 7), does not cure the deficiencies of

Pogrebinsky. Therefore, the obviousness rejections of claims 4, 8, 13, 15, and 21 as well as 6 and 16-18 are unsustainable.

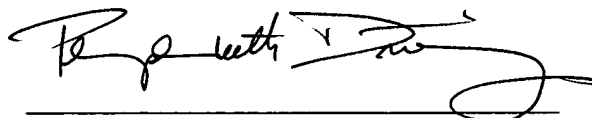
Turning now to new independent claim 26, which is directed to a method for gathering traffic statistics, includes the allowable features of dependent claim 19. Thus, new claim 26 should also be allowable.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8508 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date



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